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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
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10/511,181

10/14/2004

Jorg Schwarzbich

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1991

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EXAMINER

MCPARTLIN, SARAH BURNHAM

ART UNIT

PAPER NUMBER

3636

SHORTENED STATUTORY PERIOD OF RESPONSE	MAIL DATE	DELIVERY MODE
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3 MONTHS

03/26/2007

PAPER

Please find below and/or attached an Office communication concerning this application or proceeding.

If NO period for reply is specified above, the maximum statutory period will apply and will expire 6 MONTHS from the mailing date of this communication.

Office Action Summary

Application No.

10/511,181

Applicant(s)

SCHWARZBICH ET AL.

Examiner

Sarah B. McPartlin

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-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☐ Responsive to communication(s) filed on ____.
- 2a) ☐ This action is **FINAL**. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 1-10 is/are pending in the application.
- 4a) Of the above claim(s) ____ is/are withdrawn from consideration.
- 5) ☐ Claim(s) ____ is/are allowed.
- 6) ☒ Claim(s) 1-10 is/are rejected.
- 7) ☐ Claim(s) ____ is/are objected to.
- 8) ☐ Claim(s) ____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☒ The drawing(s) filed on 14 October 2004 is/are: a) ☒ accepted or b) ☐ objected to by the Examiner.
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) ☒ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☒ All b) ☐ Some * c) ☐ None of:
- ☐ Certified copies of the priority documents have been received.
 - ☐ Certified copies of the priority documents have been received in Application No. ____.
 - ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

* See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- 1) ☒ Notice of References Cited (PTO-892)
- 2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
- 3) ☒ Information Disclosure Statement(s) (PTO/SB/08)
Paper No(s)/Mail Date 10/14/04.

- 4) ☐ Interview Summary (PTO-413)
Paper No(s)/Mail Date. ____.
- 5) ☐ Notice of Informal Patent Application
- 6) ☐ Other: ____.

DETAILED ACTION

Priority

1. Acknowledgement is made of applicant's claim for foreign priority based on application number 102 20 028.9 filed in Germany on April 5, 2002.

Information Disclosure Statement

2. The information disclosure statement filed October 14, 2004 fails to comply with 37 CFR 1.98(a)(3) because it does not include a concise explanation of the relevance, as it is presently understood by the individual designated in 37 CFR 1.56(c) most knowledgeable about the content of the information, of each patent listed that is not in the English language. It has been placed in the application file, but the information referred to therein has not been considered.

Claim Rejections - 35 USC § 102

3. The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(e) the invention was described in a patent granted on an application for patent by another filed in the United States before the invention thereof by the applicant for patent, or on an international application by another who has fulfilled the requirements of paragraphs (1), (2), and (4) of section 371(c) of this title before the invention thereof by the applicant for patent.

The changes made to 35 U.S.C. 102(e) by the American Inventors Protection Act of 1999 (AIPA) and the Intellectual Property and High Technology Technical Amendments Act of 2002 do not apply when the reference is a U.S. patent resulting

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directly or indirectly from an international application filed before November 29, 2000.

Therefore, the prior art date of the reference is determined under 35 U.S.C. 102(e) prior to the amendment by the AIPA (pre-AIPA 35 U.S.C. 102(e)).

4. Claim 1 is rejected under 35 U.S.C. 102(e) as being anticipated by Klingler (6,746,081). With respect to claim 1, Klingler discloses a seat inlay (Figure 1) comprising an elastic grid having at least two longitudinal bars (3)(3) having hangers (unlabeled) in the form of bent end portions for suspending the inlay in a frame (5) of a seat, and cross bars (6), which connect together the two longitudinal bars (3)(3), are made of "plastic" (column 5, line 43) and are molded to longitudinal bars. Please note, "[E]ven though product-by-process claims are limited by and defined by the process, determination of patentability is based on the product itself. The patentability of a product does not depend on its method of production. If the product in the product-by-process claim is the same as or obvious from a product of the prior art, the claim is unpatentable even though the prior product was made by a different process." *In re Thorpe*, 777 F.2d 695, 698, 227 USPQ 964, 966 (Fed. Cir. 1985)

Claim Rejections - 35 USC § 103

5. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the

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invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

6. Claims 2-4 and 6 are rejected under 35 U.S.C. 103(a) as being unpatentable over Klingler (6,746,081) in view of Deceuninck (6,152,531). As disclosed above, Klingler reveals all claimed limitations with the exception of longitudinal bars made of metal and coated with plastic at least on a major part of their length, hangars made of plastic and cross bars of at least one of differing shape and bending strength.

Deceuninck discloses longitudinal bars (1) "formed in known manner of paper wrapped or plastic coated steel wire" (column 1, lines 61-62). Bent end sections (unlabeled) of longitudinal bars (1) constitute hangars and are therefore formed of plastic due to their plastic coating. Cross bars (3) are varied in longitudinal pitch in accordance with the desired support to be provided by the platform element (column 2, lines 1-5).

It would have been obvious to one of ordinary skill in the art at the time of the instant invention to coat the longitudinal bars with plastic and vary the pitch of the cross bars disclosed by Klingler as taught by Deceunink. Deceunink states that such teachings are "known" in column 1, line 61 and column 2, line 4. Such a modification would improve the life and supporting characteristics of the device.

7. Claim 5 is rejected under 35 U.S.C. 103(a) as being unpatentable over Klingler (6,746,081). Klingler discloses a lordosis support (1) having a support element that is adapted to be bulged by a bulge mechanism and is connected to cross bars (6) and (2). Although the supporting element and the transverse rods are produced separately and

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fastened together, it would have been obvious to one of ordinary skill in the art at the time the invention was made to have fastened the supporting element to the transverse rods by molding the supporting element so as to encapsulate the transverse rods since it has been held that forming in one piece an article which has formerly been formed in two pieces and put together involves only routine skill in the art. *Howard v. Detroit Stove Works*, 150 U.S. 164 (1893)

8. Claims 7 and 8 are rejected under 35 U.S.C. 103(a) as being unpatentable over Klingler (6,746,081) in view of Vermilye (4,722,821). As disclosed above, Klingler reveals all claimed elements with the exception of the cross bars being formed in one step in a single injection molding die holding the longitudinal bars as straight bars in longitudinal grooves.

Vermilye discloses a grid construction (Figure 11) formed with wires (70) laid in a groove (unlabeled) of a die (96) in a straight configuration around which plastic (104) crossbars are molded.

It would have been obvious to one of ordinary skill in the art at the time of the instant invention to use a mold and manufacturing process taught by Vermilye to form the grid structure disclosed by Klingler. Such a manufacturing process is a cost effective way to form a plastic grid over a metal framework.

9. Claim 9 is rejected under 35 U.S.C. 103(a) as being unpatentable over Klingler (6,746,081) in view of Vermilye (4,722,821), as applied to claim 7, and in further view of

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JP 01214417 (JP'417). Klingler, as modified, discloses all claimed elements except for bending the longitudinal bars in the mold.

JP'417 teaches such mold with a bending mechanism, see abstract.

It would have been obvious to one of ordinary skill in the art at the time the invention was made, to have used a bending mold taught by Hosoi in order to minimize the setup for producing the lordosis support.

10. Claim 10 is rejected under 35 U.S.C. 103(a) as being unpatentable over Klingler (6,746,081) in view of Vermilye (4,722,821), as applied to claim 7, and in further view of Herbst (US 2005/0016660 A1). As disclosed above, Klingler, as modified, discloses all claimed elements with the exception of the use of a multi-tiered injection-molding die, which is capable of forming a plurality of grids simultaneously.

Herbst discloses the use of an injection-molding die, which may contain multi-tiered dies (paragraph [0047]).

It would have been obvious to one of ordinary skill in the art at the time of the instant invention to use a multi-tiered die as taught by Herbst to form the grid elements. Such a modification will increase the efficiency of the manufacturing process and decrease the floor space required to produce multiple parts at one time.

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Conclusion

11. The prior art made of record and not relied upon is considered pertinent to applicant's disclosure: Maeyaert (5,474,358); Mundell et al. (5,911,477); Deceuninck (5,988,745) and Kopetzky et al. (6,692,074).

12. Any inquiry concerning this communication or earlier communications from the examiner should be directed to Sarah B. McPartlin whose telephone number is 571-272-6854. The examiner can normally be reached on M-Th 7:30 am - 5:00 pm.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, David Dunn can be reached on 571-272-6670. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free). If you would like assistance from a USPTO Customer Service Representative or access to the automated information system, call 800-786-9199 (IN USA OR CANADA) or 571-272-1000.


Sarah B. McPartlin
Patent Examiner
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March 21, 2007